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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/715,011

11/17/2003

Edward Lee Morris

200214U

3280

7590

09/14/2006

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EXAMINER

WEAVER, SUE A

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/715,011

Applicant(s)

MORRIS ET AL.

Examiner

Sue A. Weaver

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8 and 14 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-13 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 7, 10 and 11 remain rejected under 35 U.S.C. 102(b) as being anticipated by Tinsley et al, of record.

The elastic permits adjustability of the holding means while the hook and loop fasteners permit adjustability of the hanging means. The position of the bottle with in the holding means inherently permits adjustment of the angle the bottle will have when hanging since it has one point of suspension. Applicant has not indicated what an appropriate angle is considered to be, nor has any such angle been claimed. Note that the bottle of Tinsley definitely hangs at an angle which is adjustable according to where the elastic straps lie along the axis of the bottle. Because the straps are flexible they will inherently self align just as applicants flexible straps permit self-alignment.

1. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 5 above, and further in view of Tebeau 011, of record.

To have alternately made the holding means of a hook and loop strap rather than elastic which must be replaced when worn, would have been obvious in view of such teaching by Tebeau.

2. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 10 above, and further in view of Hampton et al '302, of record.

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To have alternately made the holder of plastic for ease of cleaning would have been obvious in view of such teaching by Hampton et al.

3. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 10 above, and further in view of Daniels.

To have optionally made the holder of webbing for greater strength would have been obvious in view of such teaching by Daniels.

4. Claims 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5.

6. Applicant's arguments filed 6/1/06 have been fully considered but they are not persuasive. Applicant's arguments on pages 5 and 6 of the amendment have not been found to be persuasive with regard to Tinsley. Applicant's comment regarding spilling milk is not understood, as there is no such mention in Tinsley. If applicant is referring to an angle bottle such would appear to hold true for applicant's arrangement in Figure 5 as well since the bottle is tilted. The holder of Tinsley does indeed having an adjustable closing means about the circumference of the bottle as provided by it's elasticity which permits it to snugly enclose the bottle.

In response to applicant's argument that Hampton et al don't teach a bottle holder made of plastic, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or

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all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Hampton et al clearly suggest the alternative use of plastic as a flexible material in the second paragraph of the detailed description.

Furthermore the art already teaches the use of hook and loop fasteners for adjustability where and adjustable material isn't used which, alternative is well-known the art.

7. Claims 8 and 14 are allowed.

8. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### Certificate of Mailing

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548. The examiner can normally be reached on Tuesday-Friday from 5:30 to 4.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SW.

  
SUE A. WEAVER  
PRIMARY EXAMINER  
GROUP 3200